entitled 'Functonal constipation,' 'Nervousness,' 'Flatulence,' 'Headaches,' and 'Common colds.' The title of each paragraph is also in heavy black type, and opposite each is a picture of a person shown to be in misery and distress. It is true that the fine print in each of these paragraphs gives the information that Kuriko will bring relief only when the ailment is caused by constipation. We are of the view, however, that this page of the pamphlet alone, considering the form of its arrangement, the ailments which are listed in large type and the limitation with reference thereto in small type, in connection with the pictures of persons evidently in misery and distress, furnishes the basis for a finding that the representations were misleading.

"A great deal of medical testimony was offered by both sides which it is argued supports the contentions of the respective parties. Again we think no useful purpose could be served in an attempt to analyze or dissect this expert testimony as it pertains to the issues in controversy. In fact, to do so would involve a weighing of the testimony, which is not our function but was that of the jury. The only contention made here which might be regarded as serious is that which arises from the submission to the jury of question 4, and its finding that Kuriko is misbranded because the labeling 'fails to bear adequate directions for use in any respect.' Concededly there was no charge in the information to which this question and answer was responsive. The only reason we find for its submission is a statement by the court that it desired an answer to the question for its own information. We are of the view that this question should not have been submitted but, even so, we are also of the view that it was not prejudicial. As this court has held, proof of any one of the claims contained in the information is sufficient. *United States* v. *Dr. Roberts Veterinary Co.*, 104 F. 2d 785, 789.

"The jury's answer to this question neither adds nor detracts from its answer to the first question, which was responsive to the charge contained in paragraph IIIa. The answer to question 1 forms the basis for a decree and this irrespective of the answer to question 4. This would still be the situation if the jury's answer to question 4 had been 'No.' There is nothing to indicate and no reason to think that the jury's answer to question 4 bore any relation to its answer to question 1. In other words, as far as we are able to discern, the jury's answer to question 1 was not dependent in any manner or to any extent upon its answer to question 4. We therefore are of the view that the submission of question 4 could have had no prejudicial effect.

"The decree is AFFIRMED."

2474. Misbranding of AlKaPectin. U. S. v. Reserve Research Co. and Herbert Williams Hoyt. Pleas of nolo contendere. Fine of $125 and costs against defendants jointly. (F. D. C. No. 24276. Sample No. 16222–K.)

INFORMATION FILED: August 13, 1948, Northern District of Ohio, against the Reserve Research Co., a corporation, Cleveland, Ohio, and Herbert Williams Hoyt, president of the corporation.

ALLEGED SHIPMENT: On or about October 30, 1947, from the State of Ohio into the State of Michigan.

PRODUCT: Analysis disclosed that the product was a white, viscous, homogenized semisolid with a slight aromatic odor and contained chiefly water, kaolin and other aluminum compounds, and a small amount of organic matter.

NATURE OF CHARGE: Misbranding, Section 502 (a), the label statement "Indicated in the treatment of Diarrhoea, Duodenitis, Colitis, Diverticulitis, Food Poisoning" was false and misleading, since the article would not be effective in the treatment of diarrhoea, duodenitis, colitis, diverticulitis, and food poisoning.

DISPOSITION: October 7, 1948. Pleas of nolo contendere having been entered, the court imposed a fine of $125 and costs against the defendants jointly.

2475. Misbranding of Vitawine. U. S. v. Interstate Laboratories, Inc. Plea of guilty. Fine of $258 and costs. (F. D. C. No. 24043. Sample Nos. 52696–H, 54133–H, 54135–H.)

INFORMATION FILED: March 10, 1948, Western District of Kentucky, against Interstate Laboratories, Inc., Louisville, Ky.

ALLEGED SHIPMENT: Between the approximate dates of September 9, 1946, and January 17, 1947, from the State of Kentucky into the State of Indiana.

PRODUCT: Analysis of samples from the 3 shipments showed the presence of 1.6, 2.01, and 2.2 grams, respectively, of iron and ammonium citrates per fluid ounce.

LABEL, IN PART: "Vitawine * * * combination of Thiamin (Vitamin B_1) 1000 U. S. P. Units, Riboflavin (Vitamin G–B_2) 100 Gammas, Niacin 10 Mg. Iron and Ammonium Citrate, Manganese Citrate, Sodium Citrate, Citric Acid and Dextrose in a palatable wine base."

NATURE OF CHARGE: Misbranding, Section 502 (a), the word "Tonic" and the statement "Iron Tonic * * * as an aid to nature in rebuilding the pep, strength and energy," which were borne on the cartons and bottles, were false and misleading. These statements represented and suggested that the article was an iron tonic which would supply therapeutic amounts of iron and would be effective for rebuilding pep, strength, and energy. The article was not an iron tonic which would supply therapeutic amounts of iron, and it would not be effective for the purposes represented.

The article was alleged also to be adulterated and misbranded under the provisions of the law applicable to foods, as reported in notices of judgment on foods.

DISPOSITION: May 26, 1948. A plea of guilty having been entered, the court imposed a fine of $258 and costs.

2476. Misbranding of phenobarbital sodium tablets. U. S. v. 68 Bottles * * *. (F. D. C. No. 25659. Sample No. 31761–K.)

LIBEL FILED: September 22, 1948, Southern District of California.

ALLEGED SHIPMENT: On or about January 16, 1948, by Cole Laboratories, from Long Island City, N. Y.

PRODUCT: 68 bottles of *phenobarbital sodium tablets* at Wilmington, Calif. Examination showed that some of the bottles labeled as containing 1,000 tablets, contained materially less than 1,000 entire tablets, together with broken and disintegrated tablets. The phenobarbital content of the unbroken tablets varied from 1.6 grains to 2.5 grains. Approximately 50% of the tablets contained either more than 2.1 grains or less than 1.8 grains of phenobarbital sodium per tablet.

LABEL, IN PART: "1000 Hypodermic Tablets Each tablet contains 2 grains (0.12 gm.) Phenobarbital Sodium * * * Distributed by Retort Pharmaceutical Co., Inc., Long Island City 1, N. Y."

NATURE OF CHARGE: Misbranding, Section 502 (a), the label statements "1000 Hypodermic Tablets" and "Each Tablet contains 2 grains * * * Phenobarbital Sodium" were false and misleading, since some of the bottles contained materially fewer whole tablets than the declared number and some tablets contained materially less and others materially more than the declared 2 grains of phenobarbital sodium.

DISPOSITION: October 19, 1948. Default decree of condemnation and destruction.

2477. Misbranding of mercuric cyanide tablets. U. S. v. 330 Bottles * * *. (F. D. C. No. 24767. Sample No. 10574–K.)

LIBEL FILED: May 10, 1948, Eastern District of New York.

ALLEGED SHIPMENT: On or about March 23 and 30 and April 5 and 7, 1948, by Veterans Administration Supply Depots, from Somerville, N. J., Montgomery, Ala., Hines, Ill., and Wilmington, Calif. (These were return shipments.)

PRODUCT: 330 100-tablet bottles of *mercuric cyanide* at Long Island City, N. Y. Examination showed that approximately ⅓ of the tablets in the bottles were capped, chipped, broken, or powdered. The average amount of mercuric cyanide in the chipped and capped tablets was 0.37 gram instead of 0.5 gram as declared.

NATURE OF CHARGE: Misbranding, Section 502 (a), the label statements "100 Tablets Mercuric Cyanide Each tablet contains 0.5 Gm (7½ grs.) Mercuric Cyanide" were false and misleading, since there were less than 100 whole tablets in each bottle and some of the tablets, namely, those which were chipped and capped, contained less than 0.5 gram of mercuric cyanide.

DISPOSITION: July 28, 1948. Default decree of condemnation and destruction.